

SERVICE DATE – JULY 18, 2018

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 33 (Sub-No. 316X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—  
IN FRANKLIN COUNTY, IOWA

Decided: July 18, 2018

Union Pacific Railroad Company (UP) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon a 0.59-mile line on its Bristow Subdivision, from milepost 318.07 to milepost 318.66 near Hampton, in Franklin County, Iowa. Notice of the exemption was served and published in the Federal Register on November 8, 2013 (78 Fed. Reg. 67,217). By decision and notice of interim trail use or abandonment (NITU) served on December 10, 2013 (December 2013 decision), the proceeding was reopened, and a 180-day period was authorized for the Franklin County Conservation Board and the Iowa National Heritage Foundation (collectively, the Commenters) jointly to negotiate with UP for an interim trail use/rail banking agreement for a 0.56-mile portion of the line, from milepost 318.10 to milepost 318.66, under § 8(d) of the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29 until June 8, 2014.<sup>1</sup> By a series of decisions issued from July 21, 2014, to January 9, 2018, the Board granted requests of the Commenters, with consent from UP, to extend the NITU negotiating period, most recently to May 18, 2018.

On May 10, 2018, the Commenters filed a letter requesting an extension of the NITU negotiation period for another 180 days, until November 14, 2018. The Commenters state that the additional time is needed to complete the negotiations. By letter filed on May 23, 2018, UP states that it is willing to continue negotiations with the Commenters.

On June 11, 2018, the National Association of Reversionary Property Owners (NARPO) filed a letter objecting to another extension of the NITU negotiating period. NARPO states that seven of its members own the land the right of way is on but cannot use the land because of the continued extension of the NITU.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use negotiations, the Board retains jurisdiction, and the NITU negotiating period may be extended. See Rail Abans.—Use of

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<sup>1</sup> The December 2013 decision also imposed a public use condition for the entire right-of-way, which expired on June 9, 2014, and two environmental consultation conditions regarding salvage that remain in effect. These conditions are not barriers to UP's consummation of the abandonment.

Rights-of-Way as Trails—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987); see also Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Vill. v. Mo. Pac. R.R., 95 F.3d 654, 659 (8th Cir. 1996). Because these requirements have been met, the NITU negotiating period will be extended for an additional 180 days, from May 18, 2018, to November 14, 2018. If an interim trail use agreement is reached (and thus interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h).

However, in light of NARPO's concerns, and given that nearly five years have elapsed since abandonment was authorized, the Commenters will be directed to provide more detailed information in the event they seek to extend the NITU negotiating period further. Specifically, in any future extension request, the Commenters will be required to describe in detail (1) the progress of its negotiations with UP since the last extension was granted, (2) the specific actions still needed to be taken before an agreement can be reached (including when those actions are expected to be completed), and (3) when (assuming the parties' further negotiations are successful) it expects an agreement with UP to be finalized.

It is ordered:

1. The Commenters' request to extend the NITU negotiating period for an additional 180 days is granted.
2. The NITU negotiating period is extended from May 18, 2018, to November 14, 2018, for the 0.56-mile portion of the line from milepost 318.10 to milepost 318.66.
3. Any future requests to extend the NITU negotiating period shall include the detailed information described above.
4. If an interim trail use/rail banking agreement is reached, the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h).
5. This decision is effective on its service date.

By the Board, Amy C. Ziehm, Acting Director, Office of Proceedings.